IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3046 of 2005

Between:

B. Mallikarjuna, S/o. Sivappa,

Aged 55 years, Occu: Paid Secretary,

Uravakonda Primary Agriculture Cooperative Society,

Uravakonda, Anantapur district.

..... PETITIONER

AND

1. The Commissioner and Registrar of Cooperative

Societies, Hyderabad

2. The Deputy Registrar of Cooperative Societies/

Divisional Cooperative Officer, Sai Nagar,

Anantapur.

3. The Station House Officer, Uravakonda,

Anantapur district.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents 1 and 2 in initiating criminal proceedings in Cr.No.69 of 2004 on the file of 3rd respondent police station even though the appeal filed against the orders of surcharge are pending in C.T.A.No.67/2004 on the file of Cooperative Tribunal Hyderabad as illegal, arbitrary and consequently direct the 3rd respondent to stay all further proceedings in Cr.No.69/2004.

Counsel for the Petitioner:MR.G.SEKHAR REDDY

Counsel for the Respondent Nos.1&2: GP FOR COOPERATION
Counsel for the Respondent No.3 : GP FOR HOME

The Court at the stage of admission made the following :

ORDER:

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Declaring the action of the respondents 1 and 2 in initiating the criminal proceedings in Cr.No.69/2004 on the file of 3rd respondent even though the appeal filed against the orders of surcharge are pending in C.T.A.No.67 of 2004 on the file of Cooperative Tribunal, Hyderabad, the present writ petition is filed.

The facts are not in dispute.

The learned counsel appearing for the petitioner Mr. O. Manohar Reddy, contended that the same set of allegations are leveled against the petitioner in the surcharge proceedings Under Section 60 of the A.P. Cooperative Societies Act, (for short 'the Act') and also a criminal case was registered by the police. The appeal against the surcharge proceedings, the writ petitioner filed an appeal before the competent Court. If the appeal is allowed, the entire proceedings in criminal prosecution shall be liable to be set aside. The orders passed under Section 60 of the Act have not attained its finality and hence he prays to quash the proceedings.

For that proposition, he relied upon a decision reported in ***"CAPT. M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. & ANOTHER".***

On the other hand, the learned counsel appearing for the respondent contended that it is a clear case of misappropriation by the petitioner and therefore after obtaining necessary orders, a report has been submitted, a case has been registered and hence there are no grounds to interfere with the criminal prosecution. Admittedly, as per Section 60 of the Act proceedings have been initiated basing on the alleged misappropriation of funds of the society by the petitioner. Challenging the orders of the surcharge, the writ petitioner filed C.T.A.67 of 2004 on the file of Cooperative Tribunal, Hyderabad, and the same is pending. For the same set of allegations, the respondents also gave a criminal complaint which is registered as Cr.No.69 of 2004 by the third respondent police station. There cannot be any dispute that it is the statutory duty for the police to conduct investigation in respect of cognizable offences, but, at the same time, mere pendency of surcharge proceedings is a bar for

not to initiate any criminal prosecution. The purpose of criminal prosecution is entirely different than that of the surcharge proceedings though they are based upon same set of allegations. Even the decision relied on by the learned counsel for the petitioner (above stated supra), it is stated:

> Conclusions which are deducible from various decisions of the Supreme Court(referred to in paras 14 to 22 of the judgment) on this point, are as follows:
> (*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately; (*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case; (*iii*) Whether the nature of charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet; (*iv*) Factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed; (*v*) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

So, from the above decision, it is clear that departmental proceedings and the proceedings in criminal case can be proceeded simultaneously and there is no bar. But, when the evidence tobe let in, in both the cases is one and the same, then only the departmental proceedings cannot be proceeded further. But it does not mean the criminal proceedings have to be stayed till the culmination of the surcharge proceedings. Therefore, the above decision has no application to the contentions raised by the writ petitioner.

On the other hand, from the above decision it is clear that both criminal prosecution as well as the departmental proceedings can go on simultaneously only

exception is that when the same set of evidence to be let in both the departmental proceedings and the criminal prosecution, then only, the departmental proceedings have to be stayed till the culmination of the file in the criminal prosecutions. Therefore, there is no bar for police in proceeding further in the criminal case, hence the writ petition is devoid of merits and is dismissed at the stage of admission.

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K.C.BHANU, J.

Dt: 22-02-2005.

Rns.

To

1. The Commissioner and Registrar of Cooperative

Societies, Hyderabad

2. The Deputy Registrar of Cooperative Societies/

Divisional Cooperative Officer, Sai Nagar,

Anantapur.

3. The Station House Officer, Uravakonda,

Anantapur district.

4. Two CCs to G.P.for Cooperation, High Court Buildings,

High Court of A.P., Hyderabad(OUT).

5. Two CCs to G.P.for Home.

6. Two CD copies.